

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DENNIS FREDERICK
SCHNEIDER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ELIZABETH SIKORA,

Respondent-Appellant.

UNPUBLISHED
February 28, 2008

No. 278694
Wayne Circuit Court
Family Division
LC No. 05-444341-NA

Before: Whitbeck, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTS

Dennis was removed from respondent's home in July 2005. He had missed at least 70 days of school in the 2004 to 2005 school year, and a truancy petition had been filed. Dennis also suffered from encopresis and enuresis and lived in an extremely cluttered home where he slept on a corner of the couch. Respondent, diagnosed with various mental health problems, had refused services other than therapy, and she mostly treated herself and Dennis with natural remedies. The court took jurisdiction and entered an order of disposition in September 2005. Respondent was required to: (1) demonstrate proper self-control and responsibility for emotions, including improving self-monitoring, having healthy relationships, communicating appropriately, participating in individual therapy, and undergoing psychological and psychiatric evaluations and following recommendations; (2) demonstrate appropriate parenting skills, including attending parenting classes and visitations and interacting well with Dennis; (3) refrain from substance abuse; (4) maintain responsible and supportive relationships with peers and family; (5) maintain an adaptive level of functioning and understand personal and family treatment needs; (6) have safe and suitable housing, including cleaning and organizing her home; (7) demonstrate an appropriate understanding and acceptance of the child's temperament, developmental requirements, and needs; (8) maintain weekly contact with the worker; (9) attend all court hearings; and (10) follow through on all court recommendations. After 22 months, the trial court

found some improvements but noncompliance with the most important requirements of the treatment plan.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court clearly erred in concluding that there was clear and convincing evidence to support termination of her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

A. Standard of Review

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court must terminate parental rights unless it finds that termination is clearly not in the best interests of the child. MCL 712A.19b(5); *Trejo*, *supra* at 353. We review the trial court's findings for clear error. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

We find no clear error in the trial court's findings. *Sours*, *supra* at 633. Respondent did take parenting classes, attend visitation and court hearings regularly, maintain contact with the worker, declutter parts of her home, and attend psychological and psychiatric evaluations and individual and family therapy. She also tried to some extent to follow through with the recommendations of the court and mental health professionals. However, she fell short in the most significant areas that would impact her ability to properly care for Dennis. She was late to most visitations and talked with Dennis about inappropriate topics. For a substantial time, she shared her house with an unsuitable partner and could not extricate herself from the relationship or the partner from her house. Parts of her house remained cluttered or inaccessible, and she had substantial mental health issues. The evidence was clear and convincing that respondent could not, within a reasonable time, provide proper care and custody for Dennis. She staunchly refused to take medication for her mental health problems for any length of time, although every counselor, psychologist, and psychiatrist recommended medication. The orders of disposition required respondent to follow all medical and mental health treatment recommendations and incorporated the recommendations of the Clinic for Child Study into respondent's treatment plan. These recommendations included medication. The need for medication was repeatedly shown by respondent's improper behavior in court, at visitations, and with caseworkers.

Respondent notes that the referee opposed the filing of a termination petition, based upon respondent's perceived compliance with her Parent Agency Agreement and Dennis's significant attachment to her. Evidence at the final hearings, however, showed a significant lack of compliance and failure to benefit from services. A parent must not merely "go through the motions" but must benefit in order to provide a proper home for the child. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Failure to comply with a court-ordered treatment plan is evidence of neglect. *Trejo*, *supra* at 360-361 n 16. Here, respondent excused or denied

her tardiness at visitations and her part in Dennis's missing so much school, and denied that she was mentally ill, bipolar, anxious, unstable, or depressed. She did not believe in medication for herself or Dennis. Dennis was clearly adversely affected by respondent's behavior, and there was no real likelihood that she would change. The evidence clearly and convincingly supported termination of respondent's parental rights to Dennis under MCL 712A.19b(3)(c)(i) and (g).

As for MCL 712A.19b(3)(j), this subsection was not argued in petitioner's closing argument or mentioned by the court in its findings. That portion of the order terminating parental rights under subsection (j) was not supported by any findings and should be vacated. Any error in finding subsection (j) is harmless, however, because clear and convincing evidence of only one statutory ground is necessary to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Further, respondent objects to the trial court's consideration of possible adoptive homes for Dennis. The court may not compare the relative merits of a foster or relative home with the parent's home in assessing compliance with the statutory factors. *In re JK*, 468 Mich 202, 214-215 n 21; 661 NW2d 216 (2003). However, determination of a child's best interests may include consideration of availability of suitable alternate homes. See *In re Hamlet (After Remand)*, 225 Mich App 505, 520; 571 NW2d 750 (1997), overruled in part on other grounds *Trejo, supra* at 353-354. The court here stated that it would never compare the parent's home with a prospective adoptive home, and appears to have looked into the possibility of adoption only in considering the best interests of the child. Therefore, we find no reversible error.

III. BEST INTERESTS OF THE CHILD

We also reject respondent's argument that the trial court clearly erred in its best interests determination.

A. Standard of Review

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. The trial court's decision on best interests is reviewed for clear error. *Trejo, supra* at 356-357.

B. Analysis

We also find no clear error in the trial court's findings on the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 353, 356-357. Determination of Dennis's best interests was a difficult question because of the child's bond with, and attachment to, his mother. Respondent and Dennis loved each other very much. Dennis opposed adoption and did not want respondent's parental rights terminated. However, Dennis was only 11 years old and was not old enough or mature enough to know what was best for him. Under his mother's care, he was frequently sick and missed much school, was not permitted to take prescribed medications, had few friends, wet and soiled his pants, and lived in reprehensible conditions. These problems were a direct result of respondent's mental illness, which she steadily refused to treat with medication. Her choices adversely impacted the child's health and well being, and the child's welfare must take precedence. Dennis spent nearly two years in foster care. While respondent made some

improvements, the real changes in attitude and motivation necessary for her to adequately care for Dennis did not occur. Therefore, the trial court did not clearly err in its best interests ruling.

Affirmed.

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Bill Schuette